

FEB 01 2019

**EDEN**



Eden Environmental Citizen's Group

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

Via US Mail, Certified

Mike Azevedo  
Colusa County Stonyford Landfill  
2 Miles South of Stonyford  
Colusa, CA 95932

Scott Lamphier  
Colusa County Public Works  
1215 Market Street  
Colusa, CA 95932

Marcos Kropf  
Colusa County Counsel  
1213 Market Street  
Colusa, CA 95932

RECEIVED  
2/1/2019

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

### I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around June 25, 2015, the Discharger submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 55061005372.

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Colusa County Stonyford Landfill:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Colusa County Stonyford Landfill ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Colusa County Stonyford Landfill facility located at 2 Miles South of Stonyford in Colusa, California ("the Facility" or "the site").

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DATE	ACTION (✓)	COPIED (✓)
RA	RA	
DRA	DRA	
AIR	AIR	
CED	CED	
MTS	MTS	
OPA	OPA	
ORC	ORC	
# FUND	# FUND	
SCFO	SCFO	
WASTE	WASTE	
WATER	WATER	

## II. THE LOCATION OF THE ALLEGED VIOLATIONS

### A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Colusa County Stonyford Landfill's permanent facility address of 2 Miles South of Stonyford in Colusa, California.

Colusa County Stonyford Landfill is a refuse and recycling collection, processing and disposal facility. Facility operations are covered under Standard Industrial Classification Codes (SIC) 4953 (Refuse Systems).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector N – Scrap Recycling and Waste Recycling Facilities, polluted discharges from operations at the Facility contain PCPs; heavy metals, such as zinc, copper, chromium, iron and aluminum; toxic metals, such as mercury, lead, arsenic and cadmium; total suspended solids ("TSS"); benzene, hydraulic fluids, battery acid, gasoline and diesel fuel, fuel additives, oil lubricants, brake and transmission fluids, chlorinated solvents, gasoline and diesel fuel; ethylene glycol; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

### B. The Affected Receiving Waters

The Facility discharges into Little Stony Creek, part of the Stony Creek Watershed, a tributary of the Sacramento River ("Receiving Waters").

The Sacramento River is a water of the United States. The CWA requires that water bodies such as the Sacramento River meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

## III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

### A. Deficient/Invalid SWPPP or Site Map

The Discharger's current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The SWPPP fails to discuss in specific detail Facility operations, including its SIC Code and hours of operations (Section X.D.2.d); or does not adequately indicate the Facility name and contact information (Section X.A.1);
- (b) The SWPPP fails to include an adequate discussion of the Facility's receiving waters (Section XI.B.6(e), Section X.G.2.ix)
- (c) The SWPPP fails to include an appropriate discussion of the Industrial Materials handled at the facility (Section X.F);
- (d) The SWPPP fails to include an adequate description of Potential Pollutant Sources and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G.1);
- (e) The SWPPP fails to include a narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including the areas of the facility with likely sources of pollutants in storm water discharges and the pollutants likely to be present (Section X.G.2);
- (f) The SWPPP fails to include an appropriate Monitoring Implementation Plan, including a discussion of Visual Observations, Sampling and Analysis and Sampling Analysis Reporting (Section XI);

(g) The SWPPP fails to include an appropriate discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events (Section XI);

(h) The SWPPP fails to include the appropriate sampling parameters for the Facility (Table 1, Section XI); and

(i) The SWPPP omits the date that it was initially prepared (Section X.A.10);

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

**B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit**

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMMS are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

**1. Failure to Conduct Visual Observations**

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

- 2. Failure to Collect and Analyze the Required Number of Storm Water Samples**
- In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.
- Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).
- Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.
- As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:
- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015;
  - b. Two storm water sample analyses for the time period January 1, 2016, through June 30, 2016;
  - c. Two storm water sample analyses for the time period July 1, 2016, through December 31, 2016;
  - d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017;
  - e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017;
  - f. Two storm water sample analyses for the time period January 1, 2018, through June 30, 2018; and
  - g. Two storm water sample analyses for the time period July 1, 2018, through December 31, 2018.

**C. *Falsification of Annual Reports Submitted to the Regional Water Board***

Section XXI.L of the General Permit provides as follows:

**L. Certification**

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

**N. Penalties for Falsification of Reports**

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 15, 2016; July 13, 2017; and July 16, 2018, the Discharger submitted its Annual Reports for the Fiscal Years 2015-17, 2016-17 and 2017-18, respectively. These Reports were signed under penalty of law by Michael Azevedo. Mr. Azevedo is the currently designated Legally Responsible Person ("LRP") for the Discharger.

Mr. Azevedo responded "Yes" to Question No. 3 on all three of the Annual Reports ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, the Discharger failed to collect and analyze *any* of the required storm water samples during either the 2015-16, 2016-17 or the 2017-18 reporting years.

Based on the foregoing, it is clear that Mr. Azevedo made false statements in the Facility's 2015-16, 2016-17 and 2017-18 Annual Reports when he indicated that the facility had collected samples according to Section XI.B of the General Permit.

**D. *Deficient BMP Implementation***

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that the Discharger has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

The Discharger's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BC1 at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day the Facility discharges storm water without meeting BAT and BCT.

**Specific BMP Deficiencies**

On October 2, 2018, the Facility was inspected by the County of Colusa, as Local Enforcement Agency for CalRecycle, pursuant to the Facility's Solid Waste Facility Permit.

During the October 2, 2018, inspection, the LEA inspector observed several areas of the landfill where the Intermediate Cover of compacted earthen materials was less than the required twelve inches to control vectors, fires, odors, blowing litter and scavenging, in violation of 27 CCR 20700.

**E. *Discharges In Violation of the General Permit***

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging a materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a

separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Colusa County Stonyford Landfill, as well as employees of the Discharger responsible for compliance with the CWA.

#### V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
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EDEN has retained counsel in this matter. To ensure proper response to this Notice, all communications should be addressed to EDEN's General Counsel, Hans W. Herb.

HANS W. HERB  
Law Offices of Hans W. Herb  
P.O. Box 970  
Santa Rosa, CA 95402

#### VII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

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During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ  
Eden Environmental Citizen's Group

Copies to:

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Executive Director  
State Water Resources Control Board  
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